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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In Re FACEBOOK INTERNET TRACKING
LITIGATION

No. 5:12-md-02314-EJD

Judge: Hon. Edward J. Davila

TRIAL DATE: NOT YET SET

Case No. 5:11-cv-04834-EJD

Related Case Nos.: 5:11-cv-04935-EJD;
5:12-cv-00370-EJD; and 5:12-cv-00807-
EJD

In Re Facebook Internet Tracking
Litigation No. 5:12-md-02314-EJD

Action Filed: September 30, 2011

PERRIN AIKENS DAVIS, PETERSEN
GROSS, DR. BRIAN K. LENTZ,
TOMMASINA IANNUZZI, TRACY SAURO,
JENNIFER SAURO, and LISA SABATO,
Individually and on Behalf of All Others
Similarly Situated,

Plaintiffs,

v.

FACEBOOK, INC.,
a Delaware Corporation

Defendant.

1 LANA BRKIC,
Individually and on Behalf of All Others
2 Similarly Situated,
3
Plaintiff,
4
v.
5 FACEBOOK, INC., a Delaware Corporation,
and DOES 1-10,
6
Defendants.
7

8 JULIAN CARROLL, On Behalf of Himself and
All Others Similarly Situated,
9
Plaintiff,
10
v.
11 FACEBOOK, INC., a Delaware Corporation,
12
Defendant.
13

14
15 LAURA MAGUIRE, ET AL., On Behalf of
Himself and All Others Similarly Situated,
16
Plaintiff,
17
v.
18 FACEBOOK, INC.,
19
Defendant.
20

21 ALEXANDRIA PARRISH, Individually and on
Behalf of All Others Similarly Situated,
22
Plaintiff,
23
v.
24 FACEBOOK, INC., and DOES 1 Through 10,
25
Defendants.

Case No. 5:11-04935-EJD

Related Case Nos.: 5:11-cv-04834-EJD;
5:12-cv-00370-EJD; and 5:12-cv-00807-
EJD

In Re Facebook Internet Tracking
Litigation Case No. 5:12-md-02314-EJD

Action Filed: October 5, 2011
Case No. 5:12-cv-00370-EJD

Related Case Nos.: 5:11-cv-04834-
EJD; 5:11-cv-04935-EJD; and 5:12-cv-
00807-EJD

In Re Facebook Internet Tracking
Litigation Case No. 5:12-md-02314-EJD

Action Filed: January 24, 2012

Case No. 5:12-cv-00807-EJD

Related Case Nos.: 5:11-cv-04834-
EJD; 5:11-cv-04935-EJD; and
5:12-cv-00370-EJD

In Re Facebook Internet Tracking
Litigation Case No. 5:12-md-02314-EJD

Action Filed: February 17, 2012
Case No. 5:12-cv-00667-EJD

In Re Facebook Internet Tracking
Litigation Case No. 5:12-md-02314-EJD

Action Filed: October 7, 2011
Transferred February 8, 2012

SHARON BEATTY, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

v.

FACEBOOK, INC., and DOES 1 Through 10,
Defendants.

BROOKE RUTLEDGE, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

v.

FACEBOOK, INC. and DOES 1 through 10,
Defendants.

MICHAEL SINGLEY, Individually and on
Behalf of All Others Similarly Situated,

Plaintiffs,

v.

FACEBOOK, INC.,
DOES 1 THROUGH 10,
Defendants.

DANA HOWARD, individually and on Behalf
of All Others Similarly Situated,

Plaintiffs,

v.

FACEBOOK, INC. and DOES 1 through 10,
Defendants.

JOHN GRAHAM, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

v.

FACEBOOK, INC., and DOES 1 Through 10,
Defendants.

Case No. 5:12-cv-00668-EJD

In Re Facebook Internet Tracking
Litigation No. 5:12-md-02314-EJD

Action Filed: October 7, 2011
Transferred February 8, 2012
Case No. 5:12-cv-00669-EJD

In Re Facebook Internet Tracking
Litigation No. 5:12-md-02314-EJD

Action Filed: October 12, 2011
Transferred February 8, 2012

Civil No. 5:12-cv-00670-EJD

In Re Facebook Internet Tracking
Litigation No. 5:12-md-02314-EJD

Action Filed: October 5, 2011
Transferred February 08, 2012

Case No. 5:12-cv-00671-EJD

In Re Facebook Internet Tracking
Litigation No. 5:12-md-02314-EJD

Action Filed: October 4, 2011 and
Transferred on February 8, 2012

Case No. 5:12-cv-00673-EJD

In Re Facebook Internet Tracking
Litigation No. 5:12-md-02314-EJD

Action Filed: October 5, 2011
Transferred February 8, 2012

DAVID M. HOFFMAN, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

v.

FACEBOOK, INC. and DOES 1 through 10,
Defendants.

Case No. 5:12-cv-00674-EJD

In Re Facebook Internet Tracking
Litigation No. 5:12-md-02314-EJD

Action Filed: October 7, 2011
Transferred February 8, 2012

JANET SEAMON, Individually and on Behalf
of All Others Similarly Situated,

Plaintiff,

v.

FACEBOOK, INC. and DOES 1 through 10,
Defendants.

Case No. 5:12-cv-00675-EJD

In Re Facebook Internet Tracking
Litigation No. 5:12-md-02314-EJD

Action Filed: October 10, 2011
Transferred February 8, 2012

CHANDRA L. THOMPSON, Individually and
on Behalf of All Others Similarly Situated,

Plaintiff,

v.

FACEBOOK, INC. and DOES 1 through 10,
Defendants.

Case No. 5:12-cv-00676-EJD

In Re Facebook Internet Tracking
Litigation No. 5:12-md-02314-EJD

Action Filed: September 30, 2011
Transferred February 8, 2012

STEPHANIE CAMPBELL, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

v.

FACEBOOK, INC. and DOES 1 through 10,
Defendants.

Case No. 5:12-cv-00796-EJD

In Re Facebook Internet Tracking
Litigation No. 5:12-md-02314-EJD

Action Filed: November 21, 2011
Transferred February 17, 2012

CYNTHIA D. QUINN, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

v.

FACEBOOK, INC. and DOES 1 through 10,
Defendants.

Case No. 5:12-cv-00797-EJD

In Re Facebook Internet Tracking
Litigation No. 5:12-md-02314-EJD

Action Filed: October 18, 2011
Transferred February 17, 2012

1 JEANNE M. WALKER, Individually and on
2 Behalf of All Others Similarly Situated,

3 Plaintiff,

4 v.

5 FACEBOOK, INC. and DOES 1 through 10,
6 Defendants.

7 JACQUELINE BURDICK, Individually and
8 on Behalf of All Others Similarly Situated,

9 Plaintiff,

10 v.

11 FACEBOOK, INC. and DOES 1 through 10,
12 Defendants.

13 EDWARD STRAVATO,

14 Plaintiff,

15 v.

16 FACEBOOK, INC.; JOHN DOE 1-10,
17 Defendants.

18 MATTHEW J. VICKERY, and Other Persons
19 Similarly Situated,

20 Plaintiff,

21 v.

22 FACEBOOK, INC., DOES 1 thru 10,
23 Defendants.

24 PATRICK K. MALONEY, Individually and on
25 Behalf of All Others Similarly Situated

26 Plaintiff,

27 v.

28 FACEBOOK, INC., DOES 1 THROUGH 10,
Defendants.

Case No. 5:12-cv-00798-EJD

In Re Facebook Internet Tracking
Litigation No. 5:12-md-02314-EJD

Action Filed: October 20, 2011
Transferred February 17, 2012

Case No. 5:12-cv-00799-EJD

In Re Facebook Internet Tracking
Litigation No. 5:12-md-02314-EJD

Action Filed: October 25, 2011
Transferred February 17, 2012

Case No. 5:12-cv-00800-EJD

In Re Facebook Internet Tracking
Litigation No. 5:12-md-02314-EJD

Action Filed: December 14, 2011
Transferred February 17, 2012

Case No. 5:12-cv-00801-EJD

In Re Facebook Internet Tracking
Litigation No. 5:12-md-02314-EJD

Action Filed: November 14, 2011
Transferred February 17, 2012

Case No. 5:12-cv-00824-EJD

In Re Facebook Internet Tracking
Litigation No. 5:12-md-02314-EJD

Action Filed: January 25, 2012
Transferred February 21, 2012

JOON KHANG, Individually and On
Behalf of All Others Similarly Situated,

Plaintiff,

v.

FACEBOOK, INC.,

Defendant.

Case No. 5:12-cv-00825-EJD

In Re Facebook Internet Tracking
Litigation No. 5:12-md-02314-EJD

Action Filed: February 1, 2012
Transferred February 21, 2012

**DEFENDANT FACEBOOK, INC.'S NOTICE OF PENDENCY OF OTHER
ACTIONS OR PROCEEDINGS (CIVIL L.R. 3-13)**

Defendant Facebook, Inc. ("Facebook"), by and through its undersigned counsel of record, hereby notifies the Court and all parties, pursuant to Civil Local Rule 3-13, that the instant matter, *In re Facebook Internet Tracking Litigation*, No. 5:12-md-02314, involves overlapping subject matter and the same defendant as another action, *Ung v. Facebook, Inc.*, No. 112-cv-217244 ("*Ung*"), pending in the Superior Court of the State of California, County of Santa Clara.¹ Facebook intends to move the Superior Court for a stay of proceedings in *Ung* pending resolution of this matter.

* * * *

The *Ung* complaint was filed on January 24, 2012 in Santa Clara Superior Court.² Facebook is the sole defendant. The *Ung* Plaintiffs purport to represent a putative class of Facebook users and non-Facebook users residing in the State of California who visited third-party websites displaying the Facebook "Like" button. (*Ung* Compl. ¶¶ 4-6.) Facebook's deadline to respond to the *Ung* complaint is March 23, 2012.

¹ The California state courts have a similar rule to Civil Local Rule 3-13. California Rule of Court 3.300 requires a notice to be filed "whenever a party in a civil action knows or learns that the action or proceeding is related to another action or proceeding pending, dismissed, or disposed of by judgment in any state or federal court in California," and requires that notice be served on all parties in the related cases. Accordingly, attached hereto as **Exhibit A** is a true and correct copy of Facebook's filing of a notice of related cases in the Superior Court of California, County of Santa Clara, filed March 16, 2012 in *Ung v. Facebook, Inc.*, 112-cv-217244.

² Attached hereto as **Exhibit B** is a true and correct copy of the *Ung* complaint.

1 The *Ung* Plaintiffs allege that Facebook used the Like button to collect individual users’
 2 browsing history using “cookies.” (*Id.* ¶¶ 4-6, 14-16.) The *Ung* Plaintiffs allege that Facebook
 3 uses, among other mechanisms, a “datr tracking cookie” to “record web browsing of its members
 4 and non-members whenever they visit web pages enabled with the Like button or Facebook
 5 Connect.” (*Id.* ¶ 14.) The *Ung* Plaintiffs also cite the blog of Nik Cubrilovic (“Cubrilovic”),
 6 whose research, they claim, allegedly revealed “that Facebook collects Facebook members’ web
 7 browsing data, even after they have logged out of Facebook, by placing cookies on their computer
 8 and sharing their browsing data whenever the user visits a Facebook-enabled webpage.” (*Id.*
 9 ¶ 15.) The Cubrilovic blog entry that forms the basis of these allegations states, “[w]ith my
 10 browser logged out of Facebook, whenever I visit any page with a Facebook like button, or share
 11 button, or any other widget, the information, including my account ID, is still being sent to
 12 Facebook.” (New Web Order, [http://nikcub.appspot.com/posts/logging-out-of-facebook-is-not-](http://nikcub.appspot.com/posts/logging-out-of-facebook-is-not-enough)
 13 enough (Sept. 25, 2011).) Facebook denies these allegations.

14 The matter pending before this Court, *In re Facebook Internet Tracking Litigation* (the
 15 “MDL Actions”), is comprised of numerous putative class actions on behalf of Facebook users
 16 that were filed in various districts across the United States between September 2011 and February
 17 2012. Facebook is the sole defendant in these actions. Between February 8, 2012 and February
 18 22, 2012, they were transferred to this District by the United States Judicial Panel on Multidistrict
 19 Litigation to “eliminate duplicative discovery; prevent inconsistent pretrial rulings, including with
 20 respect to class certification; and conserve the resources of the parties, their counsel, and the
 21 judiciary.” *In re Facebook Internet Tracking Litig.*, MDL No. 2314 (Dkt. 45) (J.P.M.L. Feb. 8,
 22 2012). This Court has scheduled a case management conference for the MDL Actions on March
 23 30, 2012.

24 Like *Ung*, the MDL Actions involve the same core set of allegations—that through the use
 25 of “cookies” (and one specific cookie, called the “datr cookie”), Facebook collected the Internet
 26 browsing history of individual users. (*Compare Davis* Compl. ¶¶ 22-23 with *Ung* Compl. ¶¶ 4-6,
 27
 28

14, 16.)³ The MDL Actions rely on the same September 2011 blog posts by Cubrilovic about Facebook cookies, including the datr cookie. (*Compare Davis* Compl. ¶¶ 21-23 with *Ung* Compl. ¶ 15.) These allegations directly mirror the alleged conduct in *Ung*.⁴ (*See, e.g., Ung* Compl. ¶ 14.) Further, although the *Ung* action purports to assert claims on behalf of Facebook users and non-Facebook users, virtually all of the Facebook user sub-class in *Ung* is encompassed by the proposed Facebook user class in several of the MDL Actions. (*E.g., Davis* Compl. ¶ 31 (seeking certification of a putative class of “all persons who had active Facebook accounts and used Facebook between May 27, 2010 and September 26, 2011, both dates inclusive, and whose privacy was violated by Facebook”).) Moreover, Facebook will likely assert similar legal and factual defenses in the *Ung* action and the MDL Actions and discovery will likely involve similar documents and data.

³ The Court need not review every complaint in the MDL Actions to see the clear overlap and connection between those actions and *Ung* and may look to one of the two first-filed cases, *Davis v. Facebook*, No. 11-cv-04834-EJD (N.D. Cal.) (“*Davis*”). It was the *Davis* plaintiffs who initiated proceedings before the MDL Panel, and the *Davis* case that the MDL Panel determined involved the same core, operative facts as the other MDL Actions.

⁴ The current complaint is the *Ung* Plaintiffs’ second attempt to pursue an action in state court. They originally filed a significantly less-detailed complaint in state court last year, a true and correct copy of which is attached hereto as **Exhibit C**. (*Ung v. Facebook, Inc.*, No. 111-cv-200467 (filed May 9, 2011).) Notably, that earlier case did not discuss the “datr tracking cookie,” which now figures prominently in the current complaint. (*Compare Ung v. Facebook, Inc.*, No. 111-cv-200467, Compl. ¶¶ 4-6 (claiming that Facebook used the Like button and Facebook Connect to “collect” plaintiffs’ “browsing history” but not mentioning the datr cookie) with *Ung* Compl. ¶¶ 4-6 (claiming that each plaintiff found the datr cookie on his or her computer after having visited specific third-party websites and that Facebook used the Like button and Facebook Connect to “track and collect” plaintiffs’ “browsing history”).) The original *Ung* complaint also did not contain a single reference to Cubrilovic or his blog, which details how the datr cookie allegedly works, as the current complaint does. (*Ung* Compl. ¶ 14.) Nor did Plaintiffs’ original complaint allege a violation of California’s wiretap law as the current complaint does. (*Id.* ¶¶ 42-49.)

Facebook subsequently removed the first *Ung* case to federal district court. After briefing on Facebook’s motion to dismiss and on jurisdictional issues was filed, the *Ung* Plaintiffs voluntarily dismissed their federal action on December 14, 2011. (*Ung v. Facebook, Inc.*, 3:11-cv-02829-JSW (N.D. Cal.), Dkt. 41.) On January 24, 2012, the current complaint was filed with the significant revisions and new detailed factual allegations concerning the datr cookie and the Cubrilovic blog posts.

1 Accordingly, Facebook has moved the California Superior Court before which *Ung* is
2 pending to stay those proceedings pending resolution of this matter.

3
4 Dated: March 16, 2012

COOLEY LLP

5
6 /s/ Jeffrey M. Gutkin
Jeffrey M. Gutkin (216083)

7 Attorneys for Defendant FACEBOOK, INC.
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CERTIFICATE OF SERVICE
(FRCP 5)

The undersigned certifies that the foregoing document was served on all counsel who are deemed to have consented to electronic service. Civil L.R. 5-5. The counsel of record not deemed to have consented to electronic service, listed below, were served with a true and correct copy of the foregoing by U.S. First Class Mail on March 16, 2012.

Attorney for Plaintiffs
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/s/ Amy E. Nash
Amy E. Nash

1016296 /HN